REMARKS/ARGUMENTS

This paper is intended as a full and complete response to the Office Action dated November 29, 2005, having a shortened statutory period for response set to expire on February 28, 2005.

Claims 1-2, 4-10 and 12-14 are pending in the Application.

Applicant acknowledges and thanks the Examiner for entering the amendments to the drawings submitted on 9/13/2005 and the amendments to the specification submitted on 8/25/2005.

I. Claims Rejection 35 USC § 103

The Office Action rejected Claims 1-2, 4-10 and 12-14 under 35 USC § 103(a) as being unpatentable over *Westmoland* US Patent 5,201,578.

Applicant's apparatus is an advertising device for produce vendors that comprises at least one edible food item removably secured to a hook.

Westmoland does not teach the attachment of edible food items to a hook. *Westmoland* merely teaches the attachment of "decorative elements in this case fine chain. Alternatively, charms, small crystals, reflectors or other such elements having interesting or pleasing visual effects" (See *Westmoland* Column 7, Line 3-8). The use of an edible food item in Applicant's apparatus does not to provide an interesting or pleasing visual effect, instead the use of an edible food item can be used by produce vendors or candy vendors as an advertising device (Applicant's Application paragraph [0003] and [0010]). Applicant feels that the Office Action is missing some showing of suggestion, teaching or motivation to demonstrate how an edible food item is similar to an element having an interesting or pleasing visual effect.

In addition, *Westmoland* does not teach the attachment of edible food items to a hook on account of *In re Dembiczak* 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). In *In re*

Dembiczak, the Court reversed a 35 USC § 103 rejection based on "the relationship between the fields of conventional trash bags and children's crafts, respectively ("[t]he artisan would also have been well aware of the ancillary, corollary, and atypical uses of 'trash' bags such as their application in hobby and art projects"). In the Applicant's situation, a jeweler would have to be aware of the ancillary, corollary, and atypical use of "food items" such as their application in jewelry before a relationship can be established. Applicant believes that no such relationship has been demonstrated.

Lastly, *Westmoland* does not teach the attachment of edible food items to a hook on account *Ex parte Hilton* 148 USPQ 356 (Bd. App 1965). *Ex parte Hilton* demonstrates that in some cases the particular shape of a product is of no patentable significance. The Board held in *Ex parte Hilton* that the shape (chips) is important because the shape results in a product that is distinct from the reference product (French fries). Similarly, Applicant believes that the particular item placed on the hook is important because it results in a product which is distinct from the reference product. Accordingly, food items should not be referred to as ornamentation only and should be relied upon to patentably distinguish the claimed invention from *Westmoland*.

Claims 2, 4-7, 9-10, and 12-14 depend upon independent Claims 1 and 8, and therefore include all of the limitations thereof. Since Applicant believes that independent Claims 1 and 9 are patentably distinct from *Westmoland*, Claims 2, 4-7, 9-10, and 12-14 are patentably distinct from *Westmoland* as well. Reconsideration of the rejection to the claims in view of the remarks is respectfully requested.

Applicant appreciates the Examiner's time and attention to this matter. Applicants believe Claims as now provided are in condition for allowance. Reconsideration of this application is respectfully requested. The Applicant invites the Examiner to contact the Applicant's representatives (713.403.7411) if any questions concerning this Application arise.

Respectfully submitted,

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